

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALANA KARPOFF SCHWARTZ,
on behalf of herself and the class,

Case No.: 13-cv-5735(PGG)

Plaintiff,
v.

INTIMACY IN NEW YORK, LLC;
INTIMACY MANAGEMENT COMPANY, LLC

Defendants.

RESPONSE TO OBJECTION BY JESSICA FEALK

Of the 79,389 class members in this case, including the 70,089 class members who received direct notice in the form of mail and/or email notice, only one has objected. The objection, however, seems more appropriately considered as a request to opt out of the class due to personal dissatisfaction as to the adequacy of her proposed relief, as opposed to objecting to the overall fairness of the class settlement. Jessica Fealk's objection was that the gift card relief would be of limited value to her as the nearest store to her is over four hours away by car. This is an inappropriate ground for objection because she was given the option to opt-out of the settlement. The opt-out mechanism specifically is designed to accommodate situations in which the settlement is fair but does not adequately compensate a few uniquely situated class members. "For those few objectors unhappy with the Settlement, their remedy was simple: opt out. The "court will not dismantle this settlement for the sake of one class member's unique demands, particularly when the class member ... had the right (and the means) to opt out and pursue its individual claims without disturbing the settlement for the rest of the class.'" *AIG, Inc. v. ACE INA Holdings, Inc.*, Nos. 07–2898, 09–2026, 2012 WL 651727, at *11–12 (N.D.Ill. Feb. 28,

2012) quoting *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico*, April 20, 2010, 910 F.Supp.2d 891, 938 (E.D.La.2012).

Moreover, Ms. Fealk's objection can also be overruled because it was waived. She was foreclosed from making the objection when she did not file it with the Court as required by paragraphs 13 and 14 of the Preliminary Approval Order (Dkt. No. 77).

Despite the procedural and substantive flaws in the objection itself, the parties would like to amicably resolve the concerns. Plaintiff's counsel has discussed the issues with Ms. Fealk, and with counsel for Intimacy, to see if a reasonable accommodation could be reached to address Ms. Fealk's unique concerns while still allowing her to participate in the class settlement. Subject to Court approval, Ms. Fealk has agreed to accept the same \$50 gift card as the other class members, except that her gift card will be redeemable for an online purchase and will include a code for free shipping. Intimacy has agreed to this accommodation for Ms. Fealk.

CONCLUSION

Although the objection is procedurally and substantively flawed, Plaintiff requests that the Court allow Ms. Fealk to participate in the class settlement with the accommodations described above. This would be in the best interest of all parties involved, including Ms. Fealk. Whether the Court is inclined to agree to the accommodations outlined above or not, Plaintiff requests that the objection be overruled and that the class settlement be finally approved.

Dated: New York, New York – August 25, 2015

Respectfully submitted,

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